

December 2, 2020

To: Phil Saucier, Attorney

Subject: Rockport Zoning Board Of Appeals, 20 Central LLC Appeal

Mr. Saucier,

In viewing last night's meeting of the Rockport Zoning Board of Appeals (ZBA), it seems that the ZBA is being led to examine a very narrow question regarding the satellite parking on the subject appeal. The ZBA is being asked whether the Planning Board (PB) "Approval" of the satellite parking lot located at 310 Commercial Street was proper based on the evidence. However, an examination of the evidence, facts and the video related to this matter show that the Planning Board never approved an application for a site plan or change of use related to 310 Commercial Street, the PB only approved the proposed plan and lease presented by 20 Central LLC. The ZBA needs to widen it's discussion to consider this very important piece of evidence, has the site plan for 310 Commercial been approved. This concern was surfaced by several ZBA members during the meeting last night. The ZBA cannot weigh in on an approval that was never granted. Counsel seems to have focused the ZBA on other details, before considering this fundamental piece of evidence.

The appellant's attorney has identified 5 areas of concern related to 310 Commercial Street (Hoboken Gardens):

1. Section 803(5): "In addition to the off-street parking spaces and loading bays required by this ordinance, the following minimum standards for landscape of parking areas shall apply."
2. Section 1004: "Required off-street parking spaces shall be so designed . . . " "Parking areas shall be landscaped in accordance with the following standards . . ."
3. Applicant did not submit a landscape plan or site plan for Hoboken Gardens lot and did not provide perpetual easement for shared use. Did not demonstrate compliance with section 803(5) or 1004 standards.
4. Chair improperly interjected that this was an existing parking lot.
5. This is being used as off-site parking lot supporting the hotel, therefore is part of the use to be approved. Should have been reviewed as such. Grandfathering does not come into play here - site was not approved as parking area prior to Sec 803.1(5)

Items 1-3 are only relevant if the PB approved a site plan for the satellite parking area - they did not.

In **item 4**, the Chair was commenting on the general suitability of the commercial property for the intended use. The Community Development Director also provided

testimony that the area has been used for parking by the current nursery occupant. The Chair curtailed discussion on landscaping requirements as an application or site plan was not submitted by the owner of 310 Commercial Street. The Chair's comments, nor that of any board member regarding parking do not constitute approval of a site plan for 310 Commercial Street.

Regarding **Item 5**, as specified in Sec 803.1(3), the applicant must own the property or present a lease for the property to be used for off-site parking. The applicant did present a plan, lease, and proposal for registry of deeds requirement placed on the 20 Central property. The PB did approve the plan and lease proposed and presented by the applicant, 20 Central, LLC, as did the ZBA. The Chair and the Planning Board believed that if there was a change in use, this would be submitted under a separate application, separate site plan, by the owner in standing of the subject property, not 20 Central, LLC. The PB did not approve a change in use for 310 Commercial Street that would invoke Items 1-3 to be required.

In the video referenced by the appellants attorney, the applicant for 20 Central, LLC when speaking of the satellite parking stated, "just to make it clear, we do not have that parking lot here as part of our site plan application. We are leasing that lot from the owners of the lot. So if they need to make improvements on that lot, that would in through a separate ". The Community Planning Director then stated that "it was for parking while the nursery and landscaping business was there." The Chair directed a question to the Community Planning director, "it's not a change of use?" The Community Planning Director responded, "there was a separate entrance to that area".

The PB took this input without question. The Community Planning Director did not raise an issue with this statement that any change of use would be submitted under a separate application. No one in the meeting raised an objection.

The PB could not approve a change of use for 310 Commercial Street, supported by evidence that:

- There was no agenda item for a site plan review 310 Commercial Street
- There was no application or site plan presented to the PB for 310 Commercial Street, required under the LUO
- The applicant before the board identified themselves as representing 20 Central LLC. They had no standing to represent the property at 310 Commercial Street, which is owned by a different entity, Hoboken School House, LLC, according to tax rolls.
- The record shows no review of a site plan for 310 Commercial Street, no review of detailed compliance with sections of the Rockport Land Use Ordinance, and no motions or votes by the board to approve a change of use for the property at 310 Commercial Street, all required under the LUO.
- This parking site was covered under a lease to the 20 Central site plan, which was approved. The owner of the property was responsible for any modifications resulting from a change of use, not the hotel property.

If this was a change of use, determined by review by the Code Enforcement Officer and/or Community Planning Director, a site plan would be brought before the Planning Board. None has been brought before the PB to date.

It would be proper to pose the following questions related to Item 5 above, to the ZBA first before considering other items, Did the Planning Board approve a site plan for 310 Commercial Street?

- Was there a PB agenda item for a site plan review 310 Commercial Street?
- Was an application or site plan presented to the PB for 310 Commercial Street?
- Did an applicant/owner with identified standing to represent the property at 310 Commercial Street appear before the board?
- Did the Planning Board review the site plan for 310 Commercial Street, perform review of detailed compliance with sections of the Rockport Land Use Ordinance?
- Were motions or votes put forward by the board to approve a change of use by the PB for the property at 310 Commercial Street?

You are kindly requested to forward this letter to the other attorneys representing interests on this appeal. In last night's meeting the ZBA was led to consider a narrow view on the approval of the satellite parking property. The evidence identified in this document is critical to an accurate consideration of the appeal before the Zoning Board of Appeals.

Respectfully,

Joe Sternowski
Rockport Planning Board, Chair